

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LOUIS RANDOLPH
a.k.a. CLYDE LEWIS,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS (NDOC), *et al.*,

Defendants.

3:17-cv-00085-MMD-CLB

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹

This case involves a civil rights action filed by Plaintiff Louis Randolph, a.k.a., Clyde Lewis ("Plaintiff") against Defendants Brian Williams, James Stogner, Oswald "Justin" Reyes, Kristopher Ledingham, and Frank Dreesen (collectively referred to as "Defendants").² Currently pending before the court is Defendants' motion for summary judgment (ECF No. 69). Plaintiff responded (ECF No. 74), and no reply was filed. Having thoroughly reviewed the record and papers, the court hereby recommends Defendants' motion for summary judgment (ECF No. 69) be granted.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff is an inmate in the custody of Nevada Department of Corrections ("NDOC") and is currently housed at the Southern Desert Correctional Center ("SDCC") in Indian Springs, Nevada. (ECF Nos. 3, 6.) Proceeding *pro se*, Plaintiff filed the instant civil rights action pursuant to 42 U.S.C. § 1983 alleging three counts against Defendants. (ECF No. 6). Plaintiff seeks monetary, injunctive, and declaratory relief. (*Id.* at 19.)

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

² Plaintiff also named Correctional Officer Harris and Johnny Youngblood as defendants in his complaint (See ECF No. 6), but they were dismissed from this action pursuant to Fed.R.Civ.P. 4(m) as service was not effectuated. (ECF No. 67.)

Pursuant to 28 U.S.C. § 1915(A)(a), the District Court entered a screening order allowing Plaintiff to proceed on the following: (1) in Count I, a violation of the First Amendment's guarantee of free exercise of religion against Defendants Reyes ("Justin"), Dreesen, and Williams; (2) in Count I, a violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") against Defendants Reyes ("Justin"), Dreesen, and Williams; (3) in Count I, a First Amendment retaliation claim against Defendant Reyes ("Justin"); (4) in Count II, a violation of the First Amendment's guarantee of free exercise of religion against Defendants Ledingham, Dreesen, and Williams; (5) in Count II, a violation of RLUIPA against Defendants Ledingham, Dreesen, and Williams; (6) in Count III, a violation of the First Amendment's guarantee of free exercise of religion against Defendants Williams and Stogner; (7) in Count III, a violation of RLUIPA against Defendants Williams and Stogner; and (8) in Count III, a violation of the Fourteenth Amendment's guarantee of equal protection against Defendants Williams and Stogner. (ECF No. 5 at 13-14.)

A. Facts Related to Count I

In Count I, Plaintiff alleges the following: Plaintiff is Muslim. (ECF No. 6 at 5.) On July 1, 2013, while housed at SDCC, Plaintiff was automatically removed from the religious Jewish meal, which is kosher, and placed on the Common Fare Menu ("CFM"). (*Id.*) From roughly August 20, 2013, through July 8, 2015, there were constant problems with the CFM meals. (*Id.*) Defendant Reyes continuously omitted two to three CFM items from Plaintiff's breakfast, lunch, and dinner because Reyes failed to order or restock CFM items for weeks or months, instead saving money by replacing the missing CFM items with food from the general population meals, in violation of Plaintiff's religious beliefs. (*Id.*) Reyes also refused to serve hot meals to non-Jewish CFM inmates, whenever there was a Jewish fasting holiday, which last for two to eight days. (*Id.*) Plaintiff complained about the lack of appropriate religious food to Reyes through kites and the grievance process. (*Id.*)

When the Jewish Rabbi would occasionally come to SDCC to visit inmates, Plaintiff would tell him about the problems Muslim inmates were having with CFM meals. (*Id.*) The

1 Rabbi would correct the situation temporarily, and Muslim inmates, including Plaintiff,
2 would receive appropriate CFM meals. (*Id.*) However, Reyes would retaliate against
3 Plaintiff and other CFM inmates for submitting grievances and reporting his violations to
4 the Rabbi by serving them reduced portions, expired and undercooked food, and old
5 vegetables and fruits, as well as by removing CFM items from their meals. (*Id.* at 5-6.)
6 Further, Reyes would hire and then fail to properly train culinary workers, which resulted
7 in inconsistent distribution of CFM food due to theft. (*Id.* at 6.) Plaintiff has lost twenty-
8 eight pounds since being taken off the kosher diet and placed onto the CFM diet due to
9 Reyes's failure to provide fully nutritious and adequate CFM meals. (*Id.*)

10 On August 10, 2015, Plaintiff submitted Grievance #20063007241 regarding
11 Reyes's failure to provide full CFM meals, rendering the meals nutritionally inadequate,
12 which infringed on Plaintiff's free exercise of religion and violated RLUIPA. (*Id.*)
13 Defendants Dreesen and Williams denied Plaintiff's grievance at the informal and first
14 level, respectively. (*Id.*) On January 25, 2015, Plaintiff submitted his second level
15 grievance, disagreeing with Williams's denial. (*Id.*) As of January 30, 2017, Plaintiff's
16 grievance has not been answered and the CFM meal problems have not been remedied.
17 (*Id.*)

18 **B. Facts Related to Count II**

19 In Count II, Plaintiff alleges the following: On July 18, 2015, religious observance of
20 the Holy Month of Ramadhan was supposed to conclude with the Muslim evening meal,
21 the Eid Feast. (ECF No. 6 at 7.) The Eid Feast is an integral part of Ramadhan. (*Id.* at
22 8.) At 2:29 p.m., while housed in SDCC Austere Housing ("AH"), Plaintiff asked non-party
23 AH Correctional Officer Heaton if Muslims would be allowed to go to Chapel with the
24 general population. (*Id.* at 7.) Heaton stated that, per AH operational procedures, they
25 were sure Plaintiff could attend services, but to let them check with the Chaplain to confirm.
26 (*Id.*) Heaton called Chaplain Youngblood, then told Plaintiff that Muslims in AH would not
27 be allowed to attend the Eid Feast in the Chapel, but that Defendant Williams and
28 Youngblood had made arrangements with culinary staff to provide double portions to

1 Muslims in AH for their Eid Feast. (*Id.*)

2 At 5:00 p.m., AH inmates were let out for dinner. (*Id.*) As Plaintiff stood in the chow
3 line with the other Muslim inmates from AH, a single meal tray with double portions for the
4 Eid Feast was handed out through the meal slot. (*Id.*) Defendant Harris, for no reason,
5 stopped the service, then went to discuss the situation with her supervisor, Defendant
6 Ledingham. (*Id.*) When Harris returned, she stated that Ledingham said Ramadhan was
7 over and so no more double portions were to be served. (*Id.*) Plaintiff explained to Harris
8 and Ledingham the arrangements made by Youngblood and Williams for AH Muslim
9 inmates to finish Ramadhan with double portions for the Eid Feast. (*Id.* at 8.) Ledingham
10 refused to listen to Plaintiff, instead saying that Ramadhan was over and threatening to
11 write a notice of charges on Plaintiff if Plaintiff continued advocating. (*Id.*)

12 Youngblood and Williams allegedly arranged the Eid Feast for AH Muslim inmates
13 with the free culinary staff. (*Id.*) Plaintiff noted that the free culinary staff persons, at least
14 one of whom is required to oversee inmate culinary workers at each meal, were all missing
15 from that meal. (*Id.*)

16 After being denied the Eid Feast by Harris and Ledingham, Plaintiff and nine other
17 Muslim inmates did not eat the non-religious meal, instead returning to AH hungry and
18 upset at being denied their religious observance. (*Id.*) Ledingham and Harris had no
19 legitimate penological purpose in denying Muslim inmates, including Plaintiff, of their right
20 to observe Ramadhan through the Eid Feast. (*Id.* at 10.)

21 Plaintiff believes that Youngblood and Williams deliberately denied AH Muslims,
22 including Plaintiff, their Eid Feast, and the opportunity to go to Chapel for Muslim service.
23 (*Id.* at 9.) According to NDOC Administrative Regulation ("AR") 518.02, inmates in AH are
24 permitted to go to religious services. (*Id.*)

25 On July 18, 2015, Plaintiff submitted an informal level grievance, #20063005214,
26 regarding the denial of his right to observe Ramadhan through the Eid Feast. (*Id.*)
27 Dreesen denied Plaintiff's grievance. (*Id.*) On October 20, 2015, Plaintiff filed a first level
28 grievance disagreeing with Dreesen's denial. (*Id.*) Around December 1st or 3rd, Williams

1 denied Plaintiff's first level grievance. (*Id.*) On December 5, 2015, Plaintiff filed a second
2 level appeal disagreeing with Williams's denial. (*Id.*) As of January 30, 2017, Plaintiff has
3 not received an answer or remedy for his grievance. (*Id.*)

4 **C. Facts Related to Count III**

5 In Count III, Plaintiff alleges the following: Chaplains Youngblood and Stogner, and
6 Warden Williams, all professed Christians, openly discriminate against Muslim inmates.
7 (ECF No. 6 at 11.) The above Defendants accommodate Jewish religious beliefs, dietary
8 requirements (providing both Kosher and CFM meal options), fasts, and holiday
9 observances; and they allow a Rabbi to prevent tampering with their meals. (*Id.*) At the
10 same time, similarly situated Muslim inmates, like Plaintiff, are denied the same
11 accommodation to practice the Islamic religions, through halal (lawful) meals allowing
12 them to observe dietary laws, fasts, holy days, and the presence of a Muslim butcher to
13 prepare meals in conformity with the holy days being observed. (*Id.*) Defendants enforce
14 AR 810 and 814 in a discriminatory manner, denying Plaintiff and other Muslim inmates
15 equal treatment compared to Jewish and Christian inmates. (*Id.*)

16 Plaintiff's religion prescribes that Muslims must eat halal food, meat slaughtered by
17 a Muslim butcher in the name of Allah, and other prescribed food blessed for a Muslim's
18 consumption. (*Id.* at 11-12.) The CFM provides for adherents of the Jewish religion but
19 leaves Plaintiff with no other option for his meals, forcing Plaintiff to eat food prepared
20 under Jewish law, rather than food prepared under Muslim law. (*Id.* at 12.) Further, Jewish
21 inmates get meals prescribed for them by their religion on their prescribed holy days. (*Id.*)
22 On these days, Plaintiff is denied hot food despite his requests, and is also denied the
23 special food given to Jewish inmates on these days. (*Id.*) Additionally, the current Jewish
24 CFM meals are not kosher, and are therefore not appropriate for Muslim consumption.
25 (*Id.*) Food is also prepared for Muslim inmates by non-believing inmates because
26 Defendant Justin does not hire inmates who are on the CFM meal. (*Id.*) CFM meals are
27 also often served cold, with reduced portions, missing items, old fruits and vegetables,
28 and Justin often uses CFM meals to punish Plaintiff for complaints to the Rabbi. (*Id.*)

1 Most Jewish inmates are white or Caucasian, whereas most Muslim inmates are
2 black. (*Id.* at 13.)

3 Plaintiff spoke with Youngblood on or around September 23 and 25, 2015, about
4 CFM meals infringing on Plaintiff's religious beliefs, and asking for halal meals. (*Id.*)
5 Youngblood told Plaintiff that Plaintiff was afforded CFM, and that Muslims can eat Jewish
6 food, so Plaintiff would not be afforded halal meals. (*Id.*)

7 On September 27, 2015, Plaintiff submitted an informal grievance # 20063008958
8 complaining of the inadequacy of the CFM meals, of being denied hot meals, and of being
9 forced to eat cold meals when Jewish inmates observed religious holidays. (*Id.*) Plaintiff
10 requested to be treated equally in his free exercise of religion. (*Id.*) On September 28,
11 2015, Plaintiff submitted to Youngblood a "Request for Accommodation of Religious
12 Practice" for review by the Religious Review Team ("RRT"). (*Id.*) The RRT, consisting of
13 Youngblood, Williams, and an Assistant Deputy Director has 120 days to respond to the
14 accommodation request. (*Id.* at 14.)

15 On October 28, 2015, Youngblood denied Plaintiff's informal grievance. (*Id.*)
16 Plaintiff submitted his first level grievance around January 21 or 23, 2016, disagreeing with
17 Youngblood's denial, and Williams denied the grievance at the first level. (*Id.* at 13-14.)
18 On January 25, 2016, Plaintiff submitted his second level grievance, disagreeing with
19 Williams's denial. (*Id.* at 14.)

20 On May 16, 2016, Plaintiff wrote to Defendant Stogner of the RRT regarding his
21 accommodation request but has not received a response. (*Id.*) As of January 30, 2017,
22 Plaintiff had not received a response to his second level grievance or his accommodation
23 request. (*Id.*)

24 **D. Defendants' Motion for Summary Judgment**

25 On November 13, 2019, Defendants filed a motion for summary judgment (ECF
26 No. 69.) Defendants assert they are entitled to summary judgment because (1) Plaintiff
27 failed to file his complaint as to Count I, within the applicable statute of limitations period,
28 (2) as to Count II, Plaintiff was allowed to exercise his religious beliefs and the restrictions

placed on Plaintiff were due to safety and security concerns, which did not place a substantial burden on Plaintiff's exercise of his religious beliefs, (3) as to the Count III First Amendment claim, the *Turner*³ factors weigh in favor of Defendants, (4) as to the Count III RLUIPA claim, Plaintiff has failed to establish that Defendants' actions of providing Plaintiff with a Kosher CFM diet substantially burdens his religious exercise; (5) as to the Count III equal protection claim, there is no evidence that Plaintiff, a Muslim inmate, is being treated differently than Jewish inmates, and (6) Defendants are entitled to qualified immunity. (*Id.*) Plaintiff opposed the motion (ECF No. 74), and Defendants did not reply.

II. LEGAL STANDARD

Summary judgment allows the court to avoid unnecessary trials. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). The court properly grants summary judgment when the record demonstrates that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). "[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). A dispute is "genuine" only where a reasonable jury could find for the nonmoving party. *Id.* Conclusory statements, speculative opinions, pleading allegations, or other assertions uncorroborated by facts are insufficient to establish a genuine dispute. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007); *Nelson v. Pima Cmty. Coll.*, 83 F.3d 1075, 1081–82 (9th Cir. 1996). At this stage, the court's role is to verify that reasonable minds could differ when interpreting the record; the court does not weigh the evidence or determine its truth. *Schmidt v. Contra Costa Cnty.*, 693 F.3d 1122, 1132 (9th Cir. 2012); *Nw. Motorcycle Ass'n*, 18 F.3d at 1472.

Summary judgment proceeds in burden-shifting steps. A moving party who does

³ *Turner v. Safley*, 482 U.S. 78, 89 (1987).

1 not bear the burden of proof at trial “must either produce evidence negating an essential
2 element of the nonmoving party’s claim or defense or show that the nonmoving party
3 does not have enough evidence of an essential element” to support its case. *Nissan Fire*
4 *& Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Ultimately, the
5 moving party must demonstrate, on the basis of authenticated evidence, that the record
6 forecloses the possibility of a reasonable jury finding in favor of the nonmoving party as
7 to disputed material facts. *Celotex*, 477 U.S. at 323; *Orr v. Bank of Am., NT & SA*, 285
8 F.3d 764, 773 (9th Cir. 2002). The court views all evidence and any inferences arising
9 therefrom in the light most favorable to the nonmoving party. *Colwell v. Bannister*, 763
10 F.3d 1060, 1065 (9th Cir. 2014).

11 Where the moving party meets its burden, the burden shifts to the nonmoving party
12 to “designate specific facts demonstrating the existence of genuine issues for trial.” *In re*
13 *Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citation omitted). “This burden
14 is not a light one,” and requires the nonmoving party to “show more than the mere
15 existence of a scintilla of evidence. . . . In fact, the non-moving party must come forth
16 with evidence from which a jury could reasonably render a verdict in the non-moving
17 party’s favor.” *Id.* (citations omitted). The nonmoving party may defeat the summary
18 judgment motion only by setting forth specific facts that illustrate a genuine dispute
19 requiring a factfinder’s resolution. *Liberty Lobby*, 477 U.S. at 248; *Celotex*, 477 U.S. at
20 324. Although the nonmoving party need not produce authenticated evidence, Fed. R.
21 Civ. P. 56(c), mere assertions, pleading allegations, and “metaphysical doubt as to the
22 material facts” will not defeat a properly-supported and meritorious summary judgment
23 motion, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

24 For purposes of opposing summary judgment, the contentions offered by a *pro se*
25 litigant in motions and pleadings are admissible to the extent that the contents are based
26 on personal knowledge and set forth facts that would be admissible into evidence and
27 the litigant attested under penalty of perjury that they were true and correct. *Jones v.*
28 *Blanas*, 393 F.3d 918, 923 (9th Cir. 2004).

1 III. DISCUSSION

2 A. Count I – Free Exercise, RLUIPA, and Retaliation Claim

3 Defendants move for dismissal of Count I of the complaint on the basis that
4 Plaintiff's claim is barred by the two-year statute of limitations applicable to claims brought
5 under 42 U.S.C. § 1983. (ECF No. 69 at 4-5.)

6 Since 42 U.S.C. § 1983 contains no statute of limitations, federal courts apply the
7 forum state's statute of limitations for personal injury claims to determine whether a
8 complaint is timely filed. *Johnson v. State of California*, 207 F.3d 650, 653 (9th Cir. 2000).
9 Therefore, in Nevada, the statute of limitations for § 1983 actions is two years. See Nev.
10 Rev. Stat. § 11.190(4)(e); *Perez v. Seevers*, 869 F.2d 425, 426 (9th Cir. 1989), *cert.*
11 *denied*, 493 U.S. 860 (1989). Under the applicable statute of limitations, Plaintiff had two
12 years from the time of the alleged injury to commence the instance suit. *Id.* An action is
13 deemed to be commenced when the complaint is filed. *Id.*

14 “Although state law determines the length of the limitations period, federal law
15 determines when a civil rights claim accrues.” *Knox v. Davis*, 260 F.3d 1009, 1012 (9th
16 Cir. 2001) (quoting *Morales v. City of Los Angeles*, 214 F.3d 1151, 1153-54 (9th Cir.
17 2000)). Under federal law, “a claim accrues when the plaintiff knows or has reason to
18 know of the injury which is the basis of the action.” *TwoRivers v. Lewis*, 174 F.3d 987,
19 992 (9th Cir. 1999). However, because the PLRA, 42 U.S.C. § 1997(e)(a), requires
20 inmates in Nevada to exhaust their claims through the NDOC's grievance process prior to
21 filing suit in federal court, the statute is tolled during the pendency of the grievance
22 process. See *Brown v. Valoff*, 422 F.3d 926, 943-43 (9th Cir. 2005); *Wisenbaker v.*
23 *Farwell*, 341 F. Supp. 2d 1160, 1165 (D. Nev. 2004). As such, events underlying a § 1983
24 action must fall within two years of the filing date, plus the number of days between the
25 filing of a grievance and prison officials' final response.

26 In his complaint, Plaintiff alleges that Defendant Reyes (“Justin”) was omitting items
27 from his CFM tray from August 20, 2013 through July 8, 2015. (See ECF No. 6 at 4-6.)
28 Defendants argue Plaintiff knew or should have known that his constitutional rights were

1 allegedly being violated as of August 20, 2013 and thus he was required to file his lawsuit
2 on or before August 20, 2015. (ECF No. 69 at 4.) Defendants further argue that while
3 Plaintiff may claim his constitutional rights were being violated on a continuing basis,
4 federal courts have held, “a mere continuing impact from past violations is not actionable.”
5 (*Id.*) (citing *Knox*, 260 F.3d at 1013 (internal quotations and citations omitted)).

6 In opposition, Plaintiff argues that he encountered ongoing problems with his CFM
7 diet from August 20, 2013 through July 8, 2015. (ECF No. 74 at 6.) Plaintiff argues that
8 he had two years plus the number of days before he received his final response to his
9 grievance to file his complaint. (*Id.* at 6-7.) Plaintiff filed his informal grievance on August
10 10, 2015 and received his second level response on August 10, 2017. (*Id.* at 45-46, 38.)
11 Plaintiff filed his complaint on February 6, 2017. (ECF No. 1-1.) Plaintiff does not present
12 any argument or evidence as to why he waited until almost two years after the initial injury
13 to file his informal grievance⁴ and he does not present any evidence or argument that his
14 claim constitutes an ongoing violation such that there may be an exception to the standard
15 statute of limitations.

16 Based on the evidence before the court, Plaintiff knew or had reason to know of his
17 injury on or about August 20, 2013. See *TwoRivers*, 174 F.3d at 992. Thus, Plaintiff had
18 two years from August 20, 2013 to file his complaint. While Plaintiff appears to argue that
19 equitable tolling should be applied to his claim, the court is not persuaded that equitable
20 tolling is appropriate. Because Plaintiff has presented no evidence that he was diligently
21 pursuing his Count I claim against Defendants or that some unusual or extraordinary
22 circumstance prevented him from timely filing his complaint, equitable tolling is not
23 appropriate. See *Wallace v. Kato*, 549 U.S. 384, 396 (“Equitable tolling is a rare remedy
24

25 ⁴ While Defendants do not raise a failure to exhaust defense, it also appears Plaintiff
26 may not have properly exhausted his administrative remedies as to his Count I allegations
27 as he (1) waited more than six months after his initial injury to file his informal grievance,
28 and (2) filed his complaint before he completed the grievance process. See NDOC,
Administrative Regulation 740: Inmate Grievance Procedure – Temporary 11/20/2018,
[http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative_Regulations/AR
%20740%20-%20Inmate%20Grievance%20Procedure%20-%20Temporary%20-
%2011.20.2018.pdf](http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative_Regulations/AR%20740%20-%20Inmate%20Grievance%20Procedure%20-%20Temporary%20-%2011.20.2018.pdf) (last visited May 26, 2020).

to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs.”); *see also Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (Equitable tolling is warranted “when extraordinary circumstances beyond the plaintiff’s control made it impossible to file a claim on time”). Therefore, based on the applicable two-year statute of limitations, Plaintiff’s alleged injuries as to Count I are time-barred. Accordingly, Defendants’ motion for summary judgment as to Count I should be granted.

B. Count III – First and Fourteenth Amendments and RLUIPA⁵

Plaintiff’s Count III claim relates to his contention that Defendants Harris, Ledingham, Dreesen, and Williams denied Plaintiff his right to freely exercise his religion in violation of the First Amendment and RLUIPA and violated the Equal Protection Clause of the Fourteenth Amendment by not affording Muslim inmates the same religious dietary accommodations as Jewish inmates, specifically failing to provide Muslim inmates kosher or halal meat meals. (ECF No. 6 at 7-8.) Defendants move for summary judgment as to Count III based on their contention that NDOC officials provided Muslims and Jewish inmates the same diet options through CFM, and this did not place a substantial burden on Plaintiff’s exercise of his religious beliefs. (ECF No. 69 at 6-9.)

1. First Amendment Free Exercise

“The right to exercise religious practices and beliefs does not terminate at the prison door. The free exercise right, however, is necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security.” *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th Cir. 1987) (per curiam) (citations omitted); *see also O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). In order to implicate the Free Exercise Clause, the inmate’s belief must be both sincerely held and rooted in religious belief. *See Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008). “A person asserting a free exercise claim must show that the

⁵ The court analyzes the Count III claim before the Count II claim based on its significance. Count III relates to Plaintiff’s diet as a whole, while Count II relates to an isolated incident regarding his diet.

1 government action in question substantially burdens the person's practice of [his]
2 religion." *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015). A regulation that
3 impinges on First Amendment rights "is valid if it is reasonably related to legitimate
4 penological interests." *Turner*, 482 U.S. at 89.

5 The factors *Turner* cited as relevant to the inquiry of whether the restrictions are
6 reasonably related to legitimate penological interests are: (1) a "valid, rational connection
7 between the prison regulation and the legitimate governmental interest put forward to
8 justify it"; (2) "whether there are alternative means of exercising the right that remain open
9 to inmates"; (3) "the impact accommodation of the asserted constitutional right will have
10 on guards and other inmates, and on the allocation of prison resources generally"; and
11 (4) the "absence of ready alternatives" and the "existence of obvious, easy alternatives."
12 *Turner*, 482 U.S. at 89-91.

13 The Defendants do not appear to question Plaintiff's sincerely held religious beliefs
14 or that those beliefs require him to consume a Kosher or Halal diet. Defendants assert
15 that Plaintiff currently receives a Kosher meal through the Common Fare meal plan.⁶
16 (See ECF Nos. 69 at 7; 69-7.) The issue, instead, is whether the Defendants' failure to
17 provide a Halal meat diet interferes with Plaintiff's ability to freely exercise his religious
18 beliefs. To make this determination, the court must engage in an analysis under *Turner*
19 of the reasonableness of the restrictions in light of the concerns posited by the
20 Defendants.

21 As to the first *Turner* factor, Defendants assert the dietary policies are related to
22 two legitimate penological interests, reduction of administration and budgetary concerns.
23 (ECF No. 69-5.) In support of this assertion, Defendants cite to AR 814.02(2), which
24 discusses the Common Fare Policy. (*Id.* at 2-3.) According to this regulation, the
25 Common Fare menu intends to: "A. Promote institutional safety, security, discipline, and
26

27 ⁶ As support, Defendants provide a letter dated February 13, 2012, which discusses
28 Plaintiff's request to continue receiving a kosher meal, (ECF No. 69-6), and a subsequent
letter dated June 26, 2013, which states the current kosher menu is being converted to
the Common Fare menu. (ECF No. 69-7.)

1 order, consistent with consideration of cost and limited resources[; and] B. Promote the
2 efficient planning, ordering, preparation, and delivery of religious/spiritual dietary meals
3 to inmates, conserving fiscal resources and preventing waste.” (*Id.*) The court finds there
4 is a valid, rational connection between NDOC’s dietary policy and its legitimate
5 administrative and budgetary concerns and therefore, the first *Turner* factor weighs in
6 Defendants’ favor. See *Shakur*, 514 F.3d at 886 (“Although the marginal cost and
7 administrative burden of adding [Plaintiff] to the roster of kosher-diet inmates would be
8 small or even negligible, we cannot conclude that no rational nexus exists between [the
9 prison’s] dietary policies and its legitimate administrative and budgetary concerns. [The
10 prison] could rationally conclude that denying Muslim prisoners kosher meals would
11 simplify its food service and reduce expenditures.”).

12 Second, the court must consider whether plaintiff has “alternative means by which
13 he can practice his religion” or is “denied all means of religious expression.” *Shakur*, 514
14 F.3d at 886. The relevant inquiry is not whether the inmate has an alternative means to
15 engage in the particular religious practice that he claims is being restricted; rather, the
16 inquiry is whether the inmate has been denied all means of religious expression. *O’Lone*,
17 482 U.S. at 351-52. Further, where “other avenues” remain available for plaintiff to
18 exercise his religious rights, courts should be particularly conscious of the deference
19 owed to prison administrators. *Turner*, 482 U.S. at 90.

20 Plaintiff concedes that he is permitted to conduct Qur’an readings, possess a
21 prayer rug, and pray five times daily within his cell, but he asserts he is unable to fully
22 participate in Ramadan, which requires worship with other Muslims and he is unable to
23 participate in the Eid al-Fitr prayer service and Eid Feast. (ECF No. 74 at 12.) The court
24 finds that NDOC provides Plaintiff with alternative means by which he can practice his
25 religion, as he has the opportunity to participate in significant aspects of his religion and
26 is not being denied all means of religious expression. See *O’Lone*, 482 U.S. at 351-52;
27 *Williams v. Morton*, 343 F.3d 212, 219 (3rd Cir. 2003) (finding the second *Turner* factor
28 is satisfied if the prison allows daily prayer, attendance at special weekly services and

1 observance of religious holidays, even if inmates could eat vegetarian meals but not Halal
2 meat). Thus, the second *Turner* factor weighs in Defendants' favor.

3 Under the third *Turner* factor, the court is required to consider the "impact
4 accommodation ... will have on guards and other inmates, and on the allocation of prison
5 resources generally." *Washington v. Harper*, 494 U.S. 210, 225 (1990). Defendants
6 argue that Plaintiff's proposed accommodation, a Halal diet, could look like favoritism to
7 other inmates and could lead to a hostile prison environment and would constitute a
8 financial burden. (ECF No. 69 at 8.) Defendants provide no evidence to support this
9 assertion. Thus, the court cannot say as a matter of law that the third *Turner* factor weighs
10 in favor of Defendants. However, the court finds that the accommodation could impact
11 guards, other inmates, and the institution's resources as described by Defendants. See
12 *Overton v. Bazzetta*, 539 U.S. 126, 135 (2003) (when accommodating an inmate's
13 demands "would cause a significant reallocation of the prison system's financial
14 resources and would impair the ability of correctional officers to protect all who are inside
15 a prison's walls," the court is "'particularly deferential' to prison administrators' regulatory
16 judgments (quoting *Turner*, 482 U.S. at 90)).

17 Finally, as to the fourth *Turner* factor, the court considers whether the presence of
18 ready alternatives undermines the reasonableness of the regulations. *Turner* does not
19 impose a "least-restrictive-alternatives test," but asks whether the inmate "has pointed to
20 some obvious regulatory alternative that fully accommodates the asserted right while not
21 imposing more than a *de minimis* cost to the valid penological goal." *Overton*, 539 U.S.
22 at 136 (citing *Turner*, 482 U.S. at 90-91). Here, Defendants argue that Plaintiff is already
23 on a kosher diet and has a vegetarian diet available to him. (ECF Nos. 69 at 9; 69-6, 69-
24 7.) Thus, because Plaintiff already receives a kosher diet, Defendants provide a
25 regulatory alternative that fully accommodates his religious needs.

26 While Defendants do not fully address the third *Turner* factor, in balancing all of
27 the *Turner* factors, the court finds that the NDOC's culinary policy regarding Halal meals
28 and using Common Fare as an alternative is reasonably related to the prison's legitimate

1 penological interests. *See Beard v. Banks*, 548 U.S. 521, 532-33 (2006) (assigning more
 2 weight to the first of the *Turner* factors in determining whether a policy is reasonable).
 3 Thus, the court concludes that the regulation is reasonably related to a legitimate
 4 penological purpose and is valid under *Turner*. Therefore, summary judgment should be
 5 granted as to the Count III First Amendment claim.

6 **2. RLUIPA**

7 RLUIPA, provides in relevant part:

8 No government shall impose a substantial burden on the religious exercise
 9 of a person residing in or confined to an institution ... even if the burden
 10 results from a rule of general applicability, unless the government
 11 demonstrates that imposition of the burden on that person: (1) is in
 furtherance of a compelling governmental interest; and (2) is the least
 restrictive means of furthering that compelling governmental interest.

12 42 U.S.C. § 2000cc-1(a). Thus, RLUIPA mandates a stricter standard of review for prison
 13 regulations that burden the free exercise of religion than the reasonableness standard
 14 articulated in *Turner*. *Greene v. Solano County Jail*, 513 F.3d 982, 986 (9th Cir. 2008)
 15 (citations omitted).

16 To establish a RLUIPA violation, Plaintiff must show that: (1) he participates in a
 17 religious exercise, and (2) the prison regulation substantially burdened that exercise.
 18 *Walker v. Beard*, 789 F.3d 1125, 1134 (9th Cir. 2015). The burden then shifts to the state
 19 to show its regulation is the least restrictive means of furthering a compelling
 20 governmental interest. *Id.* The Ninth Circuit has set out four factors for the RLUIPA
 21 analysis: (1) what “exercise of religion” is at issue; (2) what “burden,” if any, is imposed
 22 on that exercise of religion; (3) if there is a burden, whether it is “substantial;” and (4) if
 23 there is a “substantial burden,” whether it is justified by a compelling governmental
 24 interest and is the least restrictive means of furthering that compelling interest. *Navajo*
 25 *Nation v. U.S. Forest Serv.*, 479 F.3d 1024, 1033 (9th Cir. 2007), *aff’d en banc*, 535 F.3d
 26 1058, 1068 (9th Cir. 2008).

27 Although RLUIPA does not define what constitutes a “substantial burden” on
 28 religious exercise, the burden must be more than a mere inconvenience. *Navajo Nation*,

1 479 F.3d at 1033 (internal quotations and citations omitted). The Ninth Circuit has stated
2 that a substantial burden is one that is “‘oppressive’ to a ‘significantly great’ extent.” “That
3 is, a ‘substantial burden’ on ‘religious exercise’ must impose a significantly great
4 restriction or onus upon such exercise.” *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th
5 Cir. 2005) (quoting *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034
6 (9th Cir. 2004)). The burden must prevent the plaintiff “from engaging in [religious]
7 conduct or having a religious experience.” See *Navajo Nation*, 479 F.3d at 1033 (internal
8 citations omitted). In addition, a substantial burden exists when the state, “denies [an
9 important benefit] because of conduct mandated by religious belief, thereby putting
10 substantial pressure on an adherent to modify his behavior and to violate his beliefs.”
11 *Shakur*, 514 F.3d at 888 (quoting *Thomas v. Review Bd. of the Ind. Employment Sec.*
12 *Div.*, 450 U.S. 707, 717-18 (1981) (internal quotations omitted)).

13 Here, the court finds that there is no evidence to indicate that Defendants' refusal
14 to provide Plaintiff with a Halal meat diet places a “substantial burden” on Plaintiff's
15 religious exercise. Plaintiff claims the kosher diet and CFM diet are not the same meal
16 and being switched from the kosher meat diet to the CFM diet constitutes a substantial
17 burden on his religious exercise. (ECF No. 74 at 14.) While Plaintiff may have preferred
18 the kosher diet that was available prior to the institution of the CFM, Plaintiff does not
19 present any evidence or identify any specific facets of the CFM that runs afoul of halal
20 restrictions. Thus, he has not identified how the current meal provided to him violates his
21 dietary restrictions. Further, the CFM diet does appear to be kosher compliant. (See
22 ECF No. 69-7.) Because the record demonstrates that Defendants provided at least once
23 acceptable dietary option to Plaintiff, his contention that his religious exercise was
24 burdened necessarily fails. Plaintiff has failed to prove that Defendants' refusal to provide
25 him with a Halal meat diet prevents him from “engaging in religious conduct or having a
26 religious experience.” *Navajo Nation*, 535 F.3d at 1091. Accordingly, the court
27 recommends that summary judgment be granted in Defendants' favor on Plaintiff's Count
28 III RLUIPA claims.

3. Fourteenth Amendment Equal Protection

“The Equal Protection Clause requires the State to treat all similarly situated people equally.” *Shakur*, 514 F.3d at 891 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)). The preliminary inquiry in an equal protection claim is identifying the plaintiff’s relevant class, which is “comprised of similarly situated persons so that the factor motivating the alleged discrimination can be identified.” *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013) (internal quotation omitted). Then, “a plaintiff must show that the defendant acted with an intent or purpose to discriminate against him based upon his membership in a protected class.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003). Because the claim requires proof of intentional discrimination, “[m]ere indifference” to the unequal effects of a particular class does not establish discriminatory intent. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005).

Defendants move for summary judgment on the equal protection claim on the basis that the record lacks evidence that Plaintiff and Jewish inmates are treated differently, as all inmates at NDOC institutions are afforded the opportunity for the same meals, through the CFM diet. (ECF Nos. 69 at 9, 69-5.) In opposition, Plaintiff argues that Defendants offer Jewish inmates with two meal options, a kosher meat diet and the CFM diet, while Plaintiff and other Muslim inmates are only offered the CFM diet, which he describes as a “vegetarian” meal. (ECF No. 74 at 15.) Plaintiff further asserts that NDOC officials offer this kosher meat diet “in secrecy.” (*Id.*)

The court recommends that Defendants’ motion as to the Count III equal protection claim be granted. First, there is an absence of evidence related to discriminatory intent, and Plaintiff’s opposition fails to identify any evidence in the record from which a jury could conclude that Defendants intentionally discriminated against him on the basis of his Muslim beliefs. Although Plaintiff broadly complains of differential treatment between Muslims and those of the Jewish faith, Ninth Circuit precedent provides that such differences—and mere indifference thereto—is not constitutionally infirm. *Hartmann v.*

1 *Cal. Dep't of Corrs. and Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013) (within the prison
 2 context, the Constitution's equal protection guarantees do not entitle each religious group
 3 within a prison to "identical treatment and resources."); *Thornton*, 425 F.3d at 1167.
 4 Without more, no constitutional claim can prevail. Second, for the reasons explained in
 5 the analysis of the First Amendment and RLUIPA claims, it is readily apparent that
 6 Defendants accommodated Plaintiff's religious beliefs and allowed him a reasonable
 7 opportunity to exercise his faith. Plaintiff's opposition does not provide any basis for
 8 concluding otherwise. Finally, there is no evidence that Plaintiff and Jewish inmates are
 9 provided different diets. Thus, summary judgment should be granted as to Plaintiff's
 10 Count III equal protection claim.

11 **C. Count II – First Amendment and RLUIPA**

12 Plaintiff's Count II claim relates to his contention that Defendants Harris,
 13 Ledingham, Dreesen, and Williams denied Plaintiff his right to freely exercise his religion
 14 in violation of the First Amendment and RLUIPA by refusing to allow him to personally
 15 attend the chapel for Muslim services and the Eid Feast on July 18, 2015 because he
 16 was in AH, despite AR 518.02 which states that AH inmates are permitted to attend
 17 religious services. (ECF No. 6 at 7-8.) Further, Plaintiff alleges he was denied a double
 18 portion of the Eid Feast that was set up for AH Muslim inmates as an alternative to the
 19 Chapel service. (*Id.*) Defendants move for summary judgment as to Count II based on
 20 their contention that NDOC's restrictions were due to safety and security concerns, which
 21 did not place a substantial burden on Plaintiff's exercise of his religious beliefs. (ECF No.
 22 69 at 5-6.)

23 As noted in section III(B)(1) *supra*, inmates retain the First Amendment right to
 24 freely exercise their religion, subject to reasonable restrictions. See *McElyea*, 833 F.2d
 25 at 197 (citations omitted); see also *O'Lone*, 482 U.S. at 348. In order to implicate the
 26 Free Exercise Clause, the inmate's belief must be both sincerely held and rooted in
 27 religious belief. See *Shakur*, 514 F.3d at 884-85. "A person asserting a free exercise
 28 claim must show that the government action in question substantially burdens the

1 person's practice of [his] religion." *Jones*, 791 F.3d at 1031. A regulation that impinges
2 on First Amendment rights "is valid if it is reasonably related to legitimate penological
3 interests." *Turner*, 482 U.S. at 89.

4 The factors *Turner* cited as relevant to the inquiry of whether the restrictions are
5 reasonably related to legitimate penological interests are: (1) a "valid, rational connection
6 between the prison regulation and the legitimate governmental interest put forward to
7 justify it"; (2) "whether there are alternative means of exercising the right that remain open
8 to inmates"; (3) "the impact accommodation of the asserted constitutional right will have
9 on guards and other inmates, and on the allocation of prison resources generally"; and
10 (4) the "absence of ready alternatives" and the "existence of obvious, easy alternatives."
11 *Turner*, 482 U.S. at 89-91.

12 To establish a RLUIPA violation, Plaintiff must show that: (1) he participates in a
13 religious exercise, and (2) the prison regulation substantially burdened that exercise.
14 *Walker*, 789 F.3d at 1134. The burden then shifts to the state to show its regulation is
15 the least restrictive means of furthering a compelling governmental interest. *Id.* The
16 Ninth Circuit has set out four factors for the RLUIPA analysis: (1) what "exercise of
17 religion" is at issue; (2) what "burden," if any, is imposed on that exercise of religion; (3)
18 if there is a burden, whether it is "substantial;" and (4) if there is a "substantial burden,"
19 whether it is justified by a compelling governmental interest and is the least restrictive
20 means of furthering that compelling interest. *Navajo Nation*, 479 F.3d at 1033.

21 The Defendants do not appear to question Plaintiff's sincerely held religious beliefs
22 or that those beliefs require him to participate in the Eid Feast. The issue, instead, is
23 whether Defendants' restriction on Plaintiff's attendance at the Eid Feast as well as the
24 denial of the double portion of the Eid Feast meal was reasonably related to legitimate
25 penological interests of safety and security cited by the Defendants.

26 In their motion, Defendants do not address the *Turner* factors, but instead argue
27 that because Plaintiff was housed in AH in Unit 8 at SDCC, attendance at religious
28 services may be restricted due to security concerns or other special needs and SDCC

1 inmates housed in Unit 8 are only allowed to practice their religious beliefs in their cells
2 due to safety and security concerns. (ECF No. 69 at 6.) To support these assertions,
3 Defendants cite to AR 518 and AR 810, which relate to Austere Housing and Religious
4 Faith Group Activities and Programs, respectively. (See ECF Nos. 69-2, 69-3.)
5 Defendants also cite to the response to Plaintiff's informal grievance to support their
6 contention that at SDCC, inmates in Unit 8 are only allowed to practice their religious
7 beliefs in their cells due to safety and security concerns. (See ECF No. 69-4 at 7.)

8 A review of AR 518.02(1) and 518.02(2)(B) shows that religious services may be
9 restricted by the Warden due to security concerns or other special needs. (ECF No. 69-
10 2 at 3.) Further, AR 810.01(1) states the religious needs of inmates will be met, taking
11 into consideration safety, security, available resources, and need. (ECF No. 69-3 at 2.)
12 The response to informal grievance #20063005214 states:

13 Inmate Lewis, your grievance dated 7-18-15 has been reviewed. In your
14 alleged misconduct by staff. You indicated that Sergeant Ledingham
15 directed his subordinate staff to deny you an Eid Feast meal. Chaplain
16 Youngblood, Sgt. Ledingham and Officer Harris were contacted regarding
17 this matter. You were not allowed to attend the 12pm Eid feast because you
18 were assigned to SDCC housing unit 8. Unit 8 inmates are allowed to
19 practice religious activities in unit. No additional Eid events were scheduled
20 after the noon meal approved by the Wardens.

21 Grievance denied.

22 (ECF No. 69-4 at 7.)

23 As to Plaintiff's allegation that he did not receive the double portion of the Eid
24 Feast, Defendants assert Plaintiff was provided the same meal as the other Islamic
25 inmates on that date. (ECF No. 69 at 6.) Defendants cite to the response to the first level
26 grievance to support this assertion. (See ECF No. 69-4 at 4.) The response to the first
27 level grievance states:

28 Inmate Lewis #48875, I am in receipt of your grievance as it relates to being
denied to participate in the Eid Feast. Inmate Lewis all inmates received the
same meal. Therefore, the pertinent point is your inability to sit and eat in
fellowship with other Islamic inmates and the possibility of receiving double
portions. Inmate Lewis your inability to participate within the setting that was
granted was NULLIFIED by YOUR actions that caused your housing during

1 the time of the feast to be the segregated unit of Southern Desert
2 Correctional Center. Grievance DENIED.

3 (*Id.* at 4) (emphasis in original).

4 While Defendants do not state the specific safety and security concerns that
5 caused Plaintiff's inability to attend the Eid Feast or receive the double meal portion,
6 "maintain[ing] good order, security and discipline, consistent with consideration of costs
7 and limited resources," is a compelling government interest. *Shakur*, 514 F.3d at 889
8 (citing *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005)). Additionally, non-essential
9 elements of a religion may be withheld from inmates in a disciplinary segregation unit,
10 even though they are provided to inmates in the general population. See *Allen v. Toombs*
11 827 F.2d 563, 567 (9th Cir. 1987) (security considerations supported restriction that
12 prevented Native American inmates in the disciplinary segregation unit from participating
13 in Sweat Lodge Ceremony). Further, as more fully discussed in section III(B)(1) *supra*,
14 the NDOC offered Plaintiff many alternatives means by which he can practice his religion.
15 Thus, the court finds that restricting Plaintiff's access to the Eid Feast due to his
16 placement in segregated housing was reasonably related to legitimate penological
17 interests and is valid under *Turner*.

18 The evidence is also undisputed that Plaintiff's claims related to Eid Feast is limited
19 to one meal. In order to establish a claim under either the Free Exercise Clause or
20 RLUIPA, the plaintiff must show that the defendants "substantially burdened" the practice
21 of his religion. *Shakur*, 514 F.3d at 883-84 (Free Exercise claim requires proof of a
22 substantial burden); 42 U.S.C. § 2000cc-1(a) (RLUIPA requires proof of "substantial
23 burden). It is well settled law in the Ninth Circuit that intrusions which are "relatively short-
24 term and sporadic" do not constitute a substantial burden of an inmate's free exercise of
25 their religion. *Canell v. Lightner*, 143 F.3d 1210, 1215 (9th Cir. 1998); see also *Howard*
26 *v. Skolnik*, Case No. 09-15382, 2010 WL 1253458 at *1 (9th Cir. March 30, 2010)
27 (unpublished memorandum disposition) (affirming summary judgment on "First
28 Amendment claim concerning two alleged incidents where prison personnel interfered

1 with prisoner's fasting because there was no genuine issue as to whether a substantial
 2 burden was placed on Howard's free exercise of religion"); *Smith v. Cruzen*, No. 14-CV-
 3 04791 LHK (PR), 2017 WL 4865565, at *4 (N.D. Cal. Oct. 26, 2017), *aff'd*, 735 F. App'x
 4 434 (9th Cir. 2018) (granting summary judgment because one missed prayer did not
 5 amount to substantial burden on plaintiff's right to free exercise of religion).

6 Plaintiff asserts he did not receive one double portion meal during the Eid Feast in
 7 2015. Even if this is true, this single incident of receiving an improper Eid Feast meal is
 8 a short-term and sporadic intrusion into Plaintiff's religious practice and does not
 9 constitute a substantial burden on Plaintiff's rights.

10 Accordingly, based on all of the above, the court recommends that Defendants'
 11 motion for summary judgment as to Count II be granted.⁷

12 **IV. CONCLUSION**

13 For good cause appearing and for the reasons stated above, the court recommends
 14 that Defendants' motion for summary judgment (ECF No. 69) be granted.

15 The parties are advised:

16 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 17 Practice, the parties may file specific written objections to this Report and
 18 Recommendation within fourteen days of receipt. These objections should be entitled
 19 "Objections to Magistrate Judge's Report and Recommendation" and should be
 20 accompanied by points and authorities for consideration by the District Court.

21 2. This Report and Recommendation is not an appealable order and any notice
 22 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
 23 Court's judgment.

24 ///

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27 ⁷ Because the court recommends that Defendants' motion for summary judgment be
 28 granted in its entirety based on a finding that no constitutional violations occurred, it need
 not address Defendants' argument regarding qualified immunity.

1 **V. RECOMMENDATION**

2 **IT IS THEREFORE RECOMMENDED** that Defendants' motion for summary
3 judgment (ECF No. 69) be **GRANTED**; and,

4 **IT IS FURTHER RECOMMENDED** that the Clerk **ENTER JUDGMENT** accordingly.

5 **DATED:** May 27, 2020.

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UNITED STATES MAGISTRATE JUDGE